SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO.11145 OF 2001

Between:

Sri Sam's Memorial Adi Andhra Christian
Educational Society, Nandyal represented by
its President Sri K.A.Pushpa Raj

..... Petitioner

AND

The State of Andhra Pradeseh represented
by its Secretary to Government,
Education Department, Secretariat, Saifabad,
Hyderabad and 3 others.

.....Respondents

::ORDER::

Counsel for the Petitioner : Sri A.Venkata Ramana

Counsel for the Respondents : Assistant Government Pleader for School Education

Dated 8.8.2007

This petition filed by Sri Sam's Memorial Adi Andhra Christian Educational Society, Nandyal for issue of a mandamus to the respondents to transfer the management of Sam's Aided Upper Primary School, Nandyal to it can appropriately be termed as a frivolous piece of litigation, which ought to have been dismissed at the threshold and the inability of the Court's system to decide such matters for more than half a decade cannot certainly be a ground for entertaining the prayer, which does not have any legal backing.

Smt.Jeevaratnamma, mother of Sri K.A.Pushparaj (who has styled himself as president of the petitioner society) established an Elementary School at Nandyal in 1945. Subsequently, the school was upgraded as Upper Primary School and was named as Sam's Upper Primary School. In 1972, the District Educational Officer issued proceedings in Rc.No. 82-B6/70 dated 21.10.1972 and declared that Smt. Jeevaratnamma is not entitled to continue as Manager and Correspondent of the school because she failed to reinstate a Hindi Pandit in compliance of the order passed by the competent authority. Smt.Jeevaratnamma filed Writ Petition No.3274 of 1973 for quashing proceedings dated 21.10.1972. She succeeded in persuading the learned Single Judge to pass interim order dated 10.10.1973, but finally the writ petition was dismissed on 25.2.1976. Thereafter, District Educational Officer, Kurnool (respondent No.3) appointed Deputy Inspector of Schools, Kurnool as Special Officer to lookafter the day-to-day affairs of the

school (for the reasons best known to it, the petitioner has neither placed on record the order of appointment of Deputy Inspector of Schools, Kurnool as Special Officer nor it has challenged the same).

Smt. Jeevaratnamma addressed letters dated 20.11.1985 and 3.2.1989 to respondent No.3 for transfer of the management of the school to her, but could not succeed in convincing the concerned authority about the genuineness of her demand.

After the death of Smt. Jeevaratnamma in April, 1989, Sri K.A. Pushparaj, his sisters and brother formed a society under the name and style Sri Sam's Memorial Adi Andhra Christian Educational Society and got the same registered under the Societies Registration Act, 1860. Thereafter, the petitioner represented to respondent No.3 to handover the management of the school to it, but the latter did not oblige.

In the counter-affidavit filed by him, Shri C. Chandra Mouli has referred to some of the provisions of the Andhra Pradesh Education Act, 1982 (for short 'the Act') and the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Management) Rules, 1993 (for short 'the Rules'), judgment of the Division Bench in Writ Appeal No.184 of 2000, **Maniraja Educational and Rural Development Society v. The District Educational Officer, Kurnool and another,** and averred that the petitioner does not have any right, much less a legal right, to seek transfer of the management of the school.

Sri A.Venkata Ramana, learned counsel for the petitioner relied on Sections 24(3)(a), 28 and 60 of the Act, the judgment of the learned Single Judge in **R.Nagendra Rao v. Commissioner and Director of School Education**[1] and argued that even though there is no provision in the Act and Rules for transfer of the management of a

private school to a society like the petitioner, the Court should issue a mandamus to the respondents to entertain his client's prayer because the school was established by the mother of its president Shri K.A. Pushparaj. Learned counsel further argued that appointment of the Special Officer in 1976 was illegal per se and, therefore, a direction may be issued to the respondents to withdraw the Special Officer and handover the management of the school to the petitioner. Shri Venkata Ramana emphasized that continuance of the Special Officer for indefinite period should be construed as taking over of the school by the State Government and this cannot be done without following the procedure prescribed under Section 60 of the Act.

Learned Assistant Government Pleader relied on the short judgment of the Division Bench and argued that the petitioner does not have even a semblance of right to seek a mandamus for transfer of the management of the school. She emphasized that the petitioner has neither challenged the appointment of the Special Officer nor the concerned officer has been impleaded as a party and argued that Court cannot issue a direction, which may result in ouster of the Special Officer.

I have considered the respective submissions and scrutinised the record. Sections 24 (3) (a), 28 and 60 (1) of the Act on which reliance has been placed by the learned counsel for the petitioner, read as under:

24. Appointment and removal of manager of private institution:

… … …

(3)

(a) Where the competent authority is satisfied that the management is responsible for the lapses or irregularities of the institution, the competent authority may, after giving to such management an opportunity to make representation and for reasons to be recorded in writing suspend the management and appoint a special officer till the reconstitution of the management :

Provided that in relation to a private institution, under the management of a charitable or religious institution, charitable or religious endowment and a wakf, the competent authority shall be the Government or an authority or officer authorised by the Government in this behalf.

Provided further that no management of minority educational institution shall be suspended under this sub-section save for mis-management.

28. Restriction on alienation of property of private institution

(1) Notwithstanding anything in any law for the time being in force, no sale, mortgage, lease, pledge, charge or transfer of possession in respect of any property of a private institution other than a registered school shall be made or created except with the previous permission in writing of the competent authority on an application made in this behalf.

(2) (a) No permission applied for under subsection (1) shall be refused by the competent authority except where the grant of such permission will in its opinion, adversely affect the working of the institution (b) The competent authority shall pass an order, either granting or refusing permission applied for, within a period of sixty days from the date of receipt of the application.

(3) Any person aggrieved by an order refusing permission under subsection (2) may, in such manner and in such time as may be presented, appeal to the prescribed authority

(4) Any transaction made in contravention of subsection (1) shall be null and void.

60. Taking over of management of educational institutions in public interest:

(1) Where the Government are of opinion that the management of any educational institution should either in the public interest or in order to secure the proper management of the said educational institution be taken over, they may, after giving one month's notice to the management of such educational institution, to make any representation, direct by notification, that the management of the said educational institution, shall with effect on and from the date specified therein vest in the Government until the said educational institution is acquired:

Provided that no private institution under the management of a religious institution, endowment or a wakf shall be taken over without the prior consent of such management.

An analysis of the above reproduced provisions shows that in

exercise of the power vested in it under sub-section (3)(a) of Section 24, the competent authority can, after giving the management of an educational institution opportunity to make representation and for reasons to be recorded in writing, pass an order of suspension and appointment of a Special Officer. This arrangement lasts till the reconstitution of the management. Section 28 enumerates the restriction on the alienation of the property of private institution by sale, mortgage, lease, pledge, charge or transfer of possession except with the previous permission of the competent authority. In terms of sub-section (2) of Section 28, the competent authority cannot refuse permission except when it is satisfied that such a course will adversely affect the working of the institution.

Section 60 (1) provides for taking over the management of an educational institution by the government. The exercise of this power is dependent on the formation of opinion by the government that it will be in public interest or it is necessary to secure proper management of the educational institution.

In our opinion, none of these provisions has got any bearing on the petitioner's claim for transfer of the management of the school, which was established by Smt. Jeevaratnamma. Therefore, the same cannot be pressed into service for entertaining the petitioner's prayer.

We are further of the view that the petitioner's prayer for transfer of the management of the school is liable to be rejected because it has neither questioned the appointment of the Special Officer nor impleaded the concerned officer as party to the writ petition so as to enable the Court to comprehensively examine the validity of his appointment. That apart, even if the petitioner was to challenge the appointment of the Special Officer, the same would have been rejected on the ground of delay of 15 years.

The question whether the Court can issue a mandamus for transfer of management of the school was considered in Writ Petition No.18805 of 1997 – Manjira Educational and Rural Development Society, Kurnool v. The District Educational Officer, Kurnool and another. The learned Single Judge rejected the prayer of the petitioner in that case by recording the following observations:

> "6. After considering the rival submissions and the material on record, I do not find that the petitioner has got any legal right for the compliance of which this Court can issue a writ. The only claim of the petitioner is that the two named private schools have become defunct and the management was taken over by the respondents and it is being run by the Department through the Deputy Inspector of Schools acting as a Correspondent. According to the petitioner, as the Deputy Inspector of Schools is not a position to spare much time for running the schools, the management is sought to be transferred to the present petitioner society so that they can run the schools properly and efficiently. But, in order to seek a direction from this Court by invoking the powers of this Court under Art. 226 of the Constitution of India, the petitioner must have a legal enforceable right. There is absolutely no such right, which can be enforced by invoking the powers of this Court under Art.226. In fact, the learned counsel has conceded to the extent that there is no specific provision in the Act, which empowers the authorities for such transfer of the Management of the Schools from one management to another.
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> 7. Another contention advanced by the learned counsel was though there is no specific provision in the Act, but there are precedents of this Court where similar relief was granted. Therefore, the petitioner is entitled for the relief. The learned counsel also contended that the respondents did not even enquire into the matter but simply rejected the claim by observing that the claim of the petitioner is not feasible of compliance. I am unable to appreciate the contention of the petitioner that unless there is a provision in the Act in accordance with which the respondents have to act upon he could not complain of non-conducting of an enquiry in respect of his application. Further, a perusal of the judgment of this Court in W.P.No.18067 of 1993, dated 2-2-1994, which was relied upon by the learned counsel, shows that the petitioner's father was the manager of the School and he was declared unfit to hold the post of the Manager in view of the fact that he did not pay the salaries of teachers aggregating to a sum of

Rs.793/-. Subsequently, the petitioner's father also died in an accident. Thereafter, the petitioner submitted an application to the 2nd respondent (DEO) to recommend him as manager of the elementary school by changing the management. The petitioner had also stated that his father had three children including himself of which two are sons and a daughter and the petitioner is the eldest son. It is also stated that the second son Mr.Danial is working in Government Ashram School and therefore he was not eligible to be the Manager of the Elementary School and his sister P. Gnanamma gave consent in favour of the petitioner for the managership. This claim was enquired into by the Mandal Education Officer and submitted a report stating that the petitioner was eligible to hold the managership of Elementary School, who was also willing to pay back the dues to the Department and in fact stated that the petitioner remitted the amounts. However, in view of some objections filed by one Mr.J. Swamy Reddy, Advocate, the 2nd respondent recommended to the 1st respondent Director of School Education that orders may not be issued for handing over the Elementary School in favour of the petitioner. Therefore, a writ petition was filed. The Court after considering the contentions, including the objections that were filed by the Advocate Sri Swami Reddy, observed that except in the communications repeatedly sent by Advocate Swami Reddy no other allegations are made in the counter affidavit for not recognizing the petitioner as manager of the elementary school. Therefore, directed the 2nd respondent to act immediately in accordance with his own report and as per the directions issued by the 1st respondent within a period of four weeks from the date of receipt of a copy of the order.

8. From the above it is clear, there the dispute is with reference to the management claimed by the petitioner, who is the son of the erstwhile manager, which was not accepted due to certain objections filed by some other third party and this Court found that those objections are frivolous and untenable and directed the respondents to act upon their own report for recognizing the petitioner as the Manager of the School. In the present case, the petitioner is totally unconnected with the two schools, the management of which is claiming for transfer. The petitioner's claim is that the petitioner-society was registered for the purpose of running the educational institutions. As the Schools mentioned in the writ petition are not being run properly in view of paucity of time for the Deputy Inspector of Schools, who is acting as Correspondent and the petitioner-society

would be in a position to run the school in a better way, hence, they are seeking a direction from this Court to the respondents for transfer of the Managership of those two schools to the petitioner. First of all, the petitioner has no legal right for enforcement of which he is seeking a direction. Further, there is no specific provision also in the Act for such transfer. Under the above circumstances, this Court decline to grant any relief in the present writ petition."

Writ Appeal No.184 of 2000 filed by the petitioner of that case was dismissed by the Division Bench by recording the following judgment:

"Impugning the order dated 23rd December 1999 passed by a learned Single Judge of this Court dismissing the writ petition, the writ appeal is filed.

The main complaint made by the learned counsel for the appellant is that the two Schools in question are not being run properly by the Government because the Deputy Inspector of Schools, who is acting as Correspondent of the Schools, is hard pressed for time. He submits that in the public interest the management of the Schools may be given either to the appellant-society in order to run them properly or to any other Society that can run the schools in a proper manner.

The learned single Judge found on fact that there is no provision in the Act contemplating such a transfer of management and we are in full agreement with the same. The appellant may apply to the State Government for appropriate relief in the matter if so advised and the State Government may consider the representation of the appellant or of any other society which wants to take the Schools for proper management or the State Government may take appropriate steps in themselves to manage the Schools properly. Subject to the above observations, the writ appeal is dismissed. No costs."

I respectfully agree with the view expressed in the above case and hold that the petitioner's prayer for issue of a direction to the respondents to transfer the management of the school is legally untenable and the writ petition is liable to be dismissed. Ordered accordingly.

G.S.SINGHVI, CJ

8.8.2007

msv/ars/svs

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[1] 1998(3) ALD 4